

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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BILL DRAFT 2007-RBxz-34B [v.3] (03/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/30/2008 6:17:38 AM

Short Title: Motor Fuel Tax Law Changes.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE CHANGES TO THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.37 reads as rewritten:

"§ 105-449.37. Definitions; tax liability.

(a) Definitions. – The following definitions apply in this Article:

(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of June 1, 2008.

(2) Motor carrier. – A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor vehicle. The term does not include the United States, a state, or a political subdivision of a state.

(3) Motor vehicle. – Defined in G.S. 20-4.01.

(4) Operations. –The movement of a qualified motor vehicle by a motor carrier, whether loaded or empty and whether or not operated for compensation.

(5) Person. – Defined in G.S. 105-228.90.

(6) Qualified motor vehicle. – Defined in the International Fuel Tax Agreement.(7) Secretary. – Defined in G.S. 105-228.90.

(b) Liability. – A motor carrier who operates on one or more days of a reporting period is liable for the tax imposed by this Article for that reporting period and is entitled to the credits allowed for that reporting period."

SECTION 2. G.S. 105-449.38 reads as rewritten:

"§ 105-449.38. Tax levied.

A road tax for the privilege of using the streets and highways of this State is imposed upon every motor carrier on the amount of motor fuel or alternative fuel used by the

1 carrier in its operations within this State. The tax shall be at the rate established by the
2 Secretary pursuant to G.S. 105-449.80 or G.S. 105-449.136, as appropriate. This tax is
3 in addition to any other taxes imposed on motor carriers."

4 **SECTION 3.** G.S. 105-449.44 reads as rewritten:

5 **"§ 105-449.44. How to determine the amount of fuel used in the State;**
6 **presumption of amount used.**

7 (a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier
8 uses in its operations in this State for a reporting period is the number of miles the
9 motor carrier travels in this State during that period divided by the calculated miles per
10 gallon for the motor carrier for all qualified motor vehicles during that period.

11 (b) Presumption. – The Secretary must check reports filed under this Article
12 against the weigh station records and other records of the Division of Motor Vehicles of
13 the Department of Transportation and the State Highway Patrol of the Department of
14 Crime Control and Public Safety concerning motor carriers to determine if motor
15 carriers that are operating in this State are filing the reports required by this Article. If
16 the records indicate that a motor carrier operated in this State in a quarter for which the
17 motor carrier did not file a report or that the motor carrier's report for a quarter
18 understates the motor carrier's mileage in this State for that quarter by at least twenty-
19 five percent (25%), the Secretary may assess the motor carrier for an amount based on
20 the motor carrier's presumed operations. The motor carrier is presumed to have mileage
21 in this State equal to 10 trips of 450 miles each for each of the motor carrier's qualified
22 motor vehicles and to have fuel usage of four miles per gallon.

23
24 (c) Vehicles. – The number of qualified motor vehicles of a motor carrier that is
25 registered under this Article is the number of sets of decals issued to the carrier. The
26 number of qualified motor vehicles of a carrier that is not registered under this Article is
27 the number of qualified motor vehicles registered by the motor carrier in the carrier's
28 base state under the International Registration Plan."

29 **SECTION 4.** G.S. 105-449.47 reads as rewritten:

30 **"§ 105-449.47. Registration of vehicles.**

31 (a) Requirement. – A motor carrier that is subject to the International Fuel Tax
32 Agreement may not operate or cause to be operated in this State a qualified motor
33 vehicle unless both the motor carrier and at least one qualified motor vehicle are
34 registered with the motor carrier's base state jurisdiction. A motor carrier that is not
35 subject to the International Fuel Tax Agreement may not operate or cause to be operated
36 in this State a qualified motor vehicle unless both the motor carrier and at least one
37 qualified motor vehicle are registered with the Secretary for purposes of the tax imposed
38 by this Article. This subsection applies to a recreational vehicle that is considered a
39 qualified motor vehicle.

40 (a1) Registration and Decal. – When the Secretary registers a qualified motor
41 carrier, the Secretary must issue one set of decals for each qualified motor vehicle
42 operated by the motor carrier. A motor carrier must keep records of decals issued to it
43 and must be able to account for all decals it receives from the Secretary. Registrations
44 and decals issued by the Secretary are for a calendar year. All decals issued by the

Secretary remain the property of the State. The Secretary may revoke a registration or a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display one decal on each side of the vehicle at all times. A decal must be affixed to the qualified motor vehicle for which it was issued in the place and manner designated by the authority that issued it.

(b) Exemption. – This section does not apply to the operation of a qualified motor vehicle that is registered in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

SECTION 5. G.S. 105-449.47A reads as rewritten:

"§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and decals.

The Secretary may refuse to register and issue a decal to an applicant that has done any of the following:

- (1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.
- (2) Had a registration issued by another jurisdiction, pursuant to G.S. 105-449.57, cancelled for cause.
- (3) Been convicted of fraud or misrepresentation.
- (4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued a decal.(5)
Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.
- (6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 6. G.S. 105-449.50 is repealed.

SECTION 7. G.S. 105-449.51 reads as rewritten:

"§ 105-449.51. Violations declared to be misdemeanors.

Any person who operates or causes to be operated on a highway in this State a motor vehicle that does not carry a registration card as required by this Article, does not properly display a decal as required by this Article, or is not registered in accordance with this Article commits a Class 3 misdemeanor that is punishable by a fine of two hundred dollars (\$200.00). Each day's operation in violation of any provision of this section constitutes a separate offense."

SECTION 8. G.S. 105-449.52 reads as rewritten:

"§ 105-449.52. Civil penalties applicable to motor carriers.

(a) Penalty. – A motor carrier who does any of the following is subject to a civil penalty:

- (1) Operates in this State or causes to be operated in this State a motor vehicle that either fails to carry the registration card required by this Article or fails to display a decal in accordance with this Article. The amount of the penalty is one hundred dollars (\$100.00).
- (2) Is unable to account for decals the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars (\$100.00) for each decal for which the carrier is unable to account for.
- (3) Displays a decal on a motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars (\$1,000) for each decal unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the decal and the motor carrier displaying the unlawfully obtained decal are jointly and severally liable for the penalty under this subdivision.

(a1) Payment. – A penalty imposed under this section is payable to the agency that assessed the penalty. When a motor vehicle is found to be operating without a registration card or a decal or with a decal the Secretary did not issue for the vehicle, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty.

(b) Hearing. – The procedure set out in G.S. 105-449.119 for protesting a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 9. G.S. 105-449.60 reads as rewritten:

"§ 105-449.60. Definitions.

The following definitions apply in this Article:

- (1) Additive. – A de minimus amount of product that is added or mixed with motor fuel. Examples of an additive include fuel system detergent, oxidation inhibitor, gasoline antifreeze, or octane enhancers.
- (2) Aviation gasoline. – Motor fuel blended or produced specifically for use in aircraft, which has been dyed in accordance with federal regulations.
- (3) Billed gallons. – Gallons of motor fuel, either gross or net, that are invoiced for payment.
- (4) Biodiesel. – Any fuel or mixture of fuels derived in whole or in part from agricultural products or animal fats or wastes from these products or fats.
- (5) Biodiesel provider. – A person who does any of the following:
 - a. Produces an average of no more than 500,000 gallons of biodiesel per month during a calendar year. A person who produces more than this amount is a refiner.

- 1 b. Imports biodiesel outside the terminal transfer system by means
2 of a transport truck, a railroad tank car, or a tank wagon.
3
- 4 (6) Blended fuel. – A mixture composed of gasoline or diesel fuel and
5 another liquid, other than an additive, that can be used as a fuel in a
6 highway vehicle.
7 (7) Blender. – A person who produces blended fuel outside the terminal
8 transfer system.
9 (8) Bonded importer. – A person, other than a supplier, who imports by
10 transport truck or another means of transfer outside the terminal
11 transfer system motor fuel removed from a terminal located in another
12 state in one or more of the following circumstances:
13 a. The state from which the fuel is imported does not require the
14 seller of the fuel to collect motor fuel tax on the removal of the
15 fuel at that state's rate or the rate of the destination state.
16 b. The supplier of the fuel is not an elective supplier.
17 c. The supplier of the fuel is not a permissive supplier.
18 (9) Bulk end-user. – A person who maintains storage facilities for motor
19 fuel and uses part or all of the stored fuel to operate a highway vehicle.
20 (10) Bulk plant. – A motor fuel storage and distribution facility that is not a
21 terminal and from which motor fuel may be removed at a rack.
22 (11) Code. – Defined in G.S. 105-228.90.
23 (12) Consignee. – The person to whom motor fuel is shipped or delivered.
24 (13) Consignor. – The person who ships or delivers motor fuel.
25 (14) Destination state. – The state, territory, or foreign country to which
26 motor fuel is directed for delivery into a storage facility, a receptacle, a
27 container, or a type of transportation equipment for the purpose of
28 resale or use.
29 (15) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as
30 a fuel in a diesel-powered highway vehicle. The term includes
31 biodiesel, fuel oil, heating oil, high-sulfur dyed diesel fuel, and
32 kerosene. The term does not include jet fuel sold to a buyer who is
33 certified to purchase jet fuel under the Code.
34 (16) Distributor. – A person who does one or more of the following:
35 a. Produces, refines, blends, compounds, or manufactures motor
36 fuel.
37 b. Transports motor fuel into a state or exports motor fuel out of a
38 state.
39 c. Engages in the distribution of motor fuel primarily by tank car
40 or tank truck or both.
41 d. Operates a bulk plant where the person has active motor fuel
42 bulk storage.
43 (17) Diversion. – Motor fuel shipped from a terminal to a state other than
44 the destination state as indicated on the original bill of lading.

- (18) Diversion number. – The tracking number assigned by a state to a single transport truck delivery of motor fuel diverted from the original destination state.
- (19) Dyed diesel fuel. – Diesel fuel that meets the dyeing and marking requirements as described by Federal Regulation 26 CFR 48.4082.1.
- (20) Elective supplier. – A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.
- (21) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.
- (22) Export. – To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.
- (23) Fuel alcohol. – Alcohol, methanol, or fuel grade ethanol.
- (24) Fuel alcohol provider. – A person who does any of the following:
- a. Produces an average of no more than 500,000 gallons of fuel alcohol per month during a calendar year. A person who produces more than this amount is a refiner.
 - b. Imports fuel alcohol outside the terminal transfer system by means of a transport truck, a railroad tank car, or a tank wagon.
- (25) Gasohol. – A blended fuel composed of gasoline and fuel grade ethanol.
- (26) Gasoline. – Any of the following:
- a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method. The term does not include aviation gasoline.
 - b. A petroleum product component of gasoline, such as naphtha, reformat, or toluene.
 - c. Gasohol.
 - d. Fuel alcohol.
- (27) Gross gallons. – The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.
- (28) Highway. – Defined in G.S. 20-4.01(13).
- (29) Highway vehicle. – A self-propelled vehicle that is designed for use on a highway.

- (30) Import. – To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.
- (31) In-State supplier. – Either of the following:
- a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.
 - b. A supplier that does business only in this State.
- (32) Jet fuel. – Kerosene that meets both of the following conditions:
- a. Has a maximum distillation temperature of 400 degrees Fahrenheit at the ten percent (10%) recovery point and a final maximum boiling point of 572 degrees Fahrenheit .
 - b. Meets American Society Testing Materials Specification D 1655 and Military Specifications MIL-T-5624P and MIL-T-83133D, Grades JP-5 and JP-8.
- (33) Kerosene. – Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.
- (34) Marine vessel. – A ship, boat, or other watercraft used or capable of being used to move in or through the waterways of the State.
- (35) Motor fuel. – Gasoline, diesel fuel, and blended fuel.
- (36) Motor fuel rate. – The rate of tax set in G.S. 105-449.80.
- (37) Motor fuel transporter. – A person who transports motor fuel by pipeline, marine vessel, railroad tank car, or transport truck.
- (38) Net gallons. – The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.
- (39) Occasional importer. – One or more of the following that imports motor fuel by any means outside the terminal transfer system:
- a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.
 - b. A bulk user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.
 - c. A distributor that imports motor fuel for use in a race car.
- (40) Permissive supplier. – An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.
- (41) Person. – Defined in G.S. 105-228.90.
- (42) Pipeline. – A fuel distribution system that moves motor fuel, in bulk, through a pipe either from a refinery to a terminal or from a terminal to another terminal.

- (43) Position holder. – The person who holds the inventory position on the motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position on the motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.
- (44) Rack. – A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.
- (45) Refiner. – A person who owns, operates, or controls a refinery. The term includes a person who produces an average of more than 500,000 gallons of fuel alcohol or biodiesel a month during a calendar year.
- (46) Refinery. – A facility used to process crude oil, unfinished oils, natural gas liquids, or other hydrocarbons into motor fuel and from which fuel may be removed by pipeline or vessel or at a rack. The term does not include a facility that produces only blended fuel or gasohol.
- (47) Removal. – A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.
- (48) Retailer. – A person who maintains storage facilities for motor fuel and who sells or dispenses the fuel at a retail location.
- (49) Secretary. – Defined in G.S. 105-228.90.
- (50) Shipping document. – A document that identifies the name and address of the consignor, consignee, and carrier, date of deliver, product type, quantity, and document number. The term is commonly referred to as a manifest, a bill of lading, or a delivery ticket.
- (51) Shipping document number. – The identifying number from the shipping document issued when motor fuel is loaded or removed at a refiner, terminal, marine vessel, railroad, or bulk plant.
- (52) Special mobile equipment. – Defined in G.S. 105-449.37.
- (53) Supplier. – Any of the following:
- a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.
 - b. A fuel alcohol provider.
 - c. A biodiesel provider.
 - d. A refiner.
- (54) System transfer. – Either of the following:
- a. A transfer of motor fuel within the terminal transfer system.
 - b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.
- (55) Tank wagon. – A truck that is not a transport truck and is designed or used to carry at least 1,000 gallons of motor fuel.

- (56) Tank wagon importer. – A person who imports only by means of a tank wagon motor fuel that is removed from a terminal or a bulk plant located in another state.
- (57) Tax. – An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.
- (58) Terminal. – A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel, jet fuel, or aviation gasoline may be removed at a rack.
- (59) Terminal operator. – A person who owns, operates, or otherwise controls a terminal.
- (60) Terminal transfer system. – The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as "bulk transfer/terminal system" under 26 C.F.R. § 48.4081-1.
- (61) Transmix. – Either of the following:
- a. The buffer or interface between two different products in a pipeline shipment.
 - b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.
- (62) Transport truck. – A tractor trailer designed or used to transport motor fuel.
- (63) Trustee. – A person who is licensed as a supplier and who receives tax payments from and on behalf of a licensed distributor or licensed importer for remittance to the Secretary.
- (64) Two-party exchange. – A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.
- (65) User. – A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at least 10,001 pounds."

SECTION 10. G.S. 105-449.65 reads as rewritten:

"§ 105-449.65. List of persons who must have a license.

(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

- (1) A refiner.
- (2) A supplier.
- (3) A terminal operator.
- (4) An importer.
- (5) An exporter.
- (6) A blender.

(7) A motor fuel transporter.

(8) Repealed by Session Laws 1999-438, s. 20, effective August 10, 1999.

(9) Repealed by Session Laws 1999-438, s. 21, effective August 10, 1999.

(10) A distributor who purchases motor fuel from an elective or permissive supplier at an out-of-state terminal for import into this State.

(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a refiner, supplier, distributor, importer, exporter or blender and who transports fuel is considered to be licensed as a motor fuel transporter. A licensed supplier that is a biodiesel provider is considered to be licensed as a blender.

(c) Restrictions. – A supplier may not transfer motor fuel from a terminal to a marine vessel unless the person to whom the supplier transfers the motor fuel is licensed as a supplier."

SECTION 11. G.S. 105-449.66 reads as rewritten:

"§ 105-449.66. Importer licensing.

An applicant for a license as an importer must indicate on the application the type of importer license sought. A person may not be licensed as more than one type of importer. A bulk end-user that imports motor fuel from a terminal of a supplier that is not an elective or a permissive supplier must be licensed as a bonded importer. A bulk end-user that imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer must be licensed as an occasional importer. A bulk end-user that imports motor fuel only from a terminal of an elective or a permissive supplier is not required to be licensed as an importer."

SECTION 12. G.S. 105-449.68 reads as rewritten:

"§ 105-449.68. Restrictions on who can get a license as a distributor.

A bulk end-user of motor fuel may not be licensed as a distributor unless the bulk end-user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a bulk end-user that was licensed as a distributor on January 1, 1996. If a distributor license held by a bulk end-user on January 1, 1996, is subsequently cancelled, the bulk end-user is subject to the restriction set in this section."

SECTION 13. G.S. 105-449.69(c) reads as rewritten:

"(c) Federal Certificate. – An applicant for a license as a refiner, a supplier, a terminal operator, or a blender, must have a federal Certificate of Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is

1 required to have a federal Certificate of Registry must include the registration number
2 of the certificate on the application for a license under this section.

3 An applicant for a license as an importer, an exporter, or a distributor that has a
4 federal Certificate of Registry issued under § 4101 of the Code must include the
5 registration number of the certificate on the application for a license under this section."

6 **SECTION 14 .** G.S. 105-449.70(a) reads as rewritten:

7 "(a) Election. – An applicant for a license as a supplier may elect on the
8 application to collect the excise tax due this State on motor fuel that is removed by the
9 supplier at a terminal located in another state and has this State as its destination state.
10 The Secretary must provide for this election on the application form. A supplier that
11 makes the election allowed by this section is an elective supplier. A supplier that does
12 not make the election allowed by this section is an in-State supplier.

13 A supplier that does not make the election on the application for a supplier's license
14 may make the election later by completing an election form provided by the Secretary.
15 A supplier that does not make the election may not act as an elective supplier for motor
16 fuel that is removed at a terminal in another state and has this State as its destination
17 state."

18 **SECTION 15.** G.S. 105-449.74 reads as rewritten:

19 **"§ 105-449.74. Issuance of license.**

20 Upon approval of an application, the Secretary must issue a license to the applicant.
21 A supplier's license must indicate the category of the supplier. An importer's license
22 must indicate the category of the importer. A license holder must maintain and display a
23 copy of the license issued under this Part in a conspicuous place at each place of
24 business of the license holder. A license is not transferable and remains in effect until
25 surrendered or cancelled."

26 **SECTION 16.** G.S. 105-449.75 reads as rewritten:

27 **"§ 105-449.75. License holder must notify the Secretary of discontinuance of
28 business.**

29 A license holder that stops engaging in this State in the business for which the
30 license was issued must give the Secretary written notice of the change and must
31 surrender the license to the Secretary. The notice must give the date the change takes
32 effect and, if the license holder has transferred the business to another by sale or
33 otherwise, the date of the transfer and the name and address of the person to whom the
34 business is transferred.

35 The license holder is responsible for all taxes for which the license holder is liable
36 under this Article but are not yet due. If the license holder has transferred the business
37 to another and does not give the notice required by this section, the person to whom the
38 license holder has transferred the business is liable for the amount of any tax the license
39 holder owed the State on the date the business was transferred. The liability of the
40 person to whom the business is transferred is limited to the value of the property
41 acquired from the license holder."

42 **SECTION 17.** G.S. 105-449.81 reads as rewritten:

43 **"§ 105-449.81. Excise tax on motor fuel.**

44 An excise tax at the motor fuel rate is imposed on motor fuel that is:

- (1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.
- (2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.
- (3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.
- (3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1, 2008.
- (4) Blended fuel made in this State or imported to this State.
- (5) Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by section 4081 of the Code.
- (6) Transferred within the terminal transfer system to a person that is not licensed as a supplier with the State.
- (7) Fuel grade ethanol that meets either of the following descriptions:
 - a. Is removed from a terminal or another storage and distribution facility.
 - b. Is imported to this State outside the terminal transfer system."

SECTION 18. G. S. 105-449.82(c) reads as rewritten:

"(c) **Terminal Rack Removal.** – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel.

If the motor fuel is removed for export by an unlicensed exporter, the exporter is liable for tax on the fuel at the motor fuel rate and at the rate of the destination state. The supplier who sold the motor fuel to the unlicensed exporter is jointly and severally liable for the tax due on the fuel at the motor fuel tax rate."

SECTION 19. G.S. 105-449.83A reads as rewritten:

"§ 105-449.83A. Liability for tax on fuel grade ethanol.

The excise tax imposed by G.S. 105-449.81 on fuel grade ethanol removed from a storage facility located within this State or imported into the State is payable by the fuel alcohol provider. "

SECTION 20. G.S. 105-449.85 reads as rewritten:

"§ 105-449.85. Compensating tax on and liability for unaccounted for motor fuel losses at a terminal.

(a) Tax. – An excise tax at the motor fuel rate is imposed annually on unaccounted for motor fuel losses at a terminal that exceed one-half of one percent (0.5%) of the number of net gallons removed from the terminal during the year by a system transfer or at a terminal rack. To determine if this tax applies, the terminal operator of the terminal must determine the difference between the following:

(1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year.

(2) The amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year.

(b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this section and is liable for a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the Secretary as having been removed from the terminal is presumed to be unaccounted for product. A terminal operator may establish that motor fuel received at a terminal but not shown on an informational return as having been removed from the terminal was lost or part of a transmix and for which an accounting can be made."

SECTION 21. G.S. 105-449.86(b) reads as rewritten:

(b) Liability. – If the distributor of dyed diesel fuel that is taxable under this section is not liable for the tax imposed by this section, the person that acquires the fuel is liable for the tax. The distributor of dyed diesel fuel that is taxable under this section is liable for the tax imposed by this section in the following circumstances:

(1) When the person acquiring the dyed diesel fuel has storage facilities for the fuel and is therefore a bulk end-user of the fuel.

(2) When the person acquired the dyed diesel fuel from a retail outlet of the distributor by using an access card or code indicating that the person's use of the fuel is taxable under this section."

SECTION 22. G.S. 105-449.87(b) reads as rewritten:

"(b) General Liability. – The operator of a highway vehicle that uses motor fuel that is taxable under subdivisions (a)(1) through (a)(3) of this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end-seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end-seller is jointly and severally liable for the tax. If the Secretary determines that a bulk end-user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle. An end-seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the end-seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123."

1 **SECTION 23.** G.S. 105-449.89 reads as rewritten:

2 **"§ 105-449.89. Removals by out-of-state bulk-end user.**

3 An out-of-state bulk end-user may not remove motor fuel from a terminal in this
4 State for use in the state in which the bulk end-user is located unless the bulk end-user is
5 licensed under this Article as an exporter. An out-of-state bulk end-user that is not
6 licensed under this Article may remove motor fuel from a bulk plant in this State."

7 **SECTION 24.** G.S. 105-449.91 reads as rewritten:

8 **"§ 105-449.91. Remittance of tax to supplier.**

9 (a) Distributor. – A distributor must remit tax due on motor fuel removed at a
10 terminal rack to the supplier of the fuel. A licensed distributor has the right to defer the
11 remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to
12 this State or to another state. The time when an unlicensed distributor must remit tax to
13 a supplier is governed by the terms of the contract between the supplier and the
14 unlicensed distributor.

15 (b) Exporter. –A licensed exporter must remit tax due on motor fuel removed at a
16 terminal rack to the supplier of the fuel. The time when an exporter must remit tax to a
17 supplier is governed by the law of the destination state of the exported motor fuel.

18 (c) Importer. – A licensed importer must remit tax due on motor fuel removed at
19 a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A
20 licensed importer that removes fuel from a terminal rack of a permissive or an elective
21 supplier has the right to defer the remittance of tax to the supplier until the date the
22 supplier must pay the tax to this State.

23 (d) General. – Any other person who removes motor fuel at a terminal rack must
24 remit tax due on the motor fuel to the supplier of the fuel. The time a person must remit
25 tax to a supplier is governed by the terms of the contract between the supplier and the
26 person. The method by which a person must remit tax to a supplier under this section is
27 governed by the terms of the contract between the supplier and that person. G.S.
28 105-449.76 governs the cancellation of a license of a distributor, an exporter, and an
29 importer."

30 **SECTION 25.** G.S. 105-449.96 reads as rewritten:

31 **"§ 105-449.96. Information required on return filed by supplier.**

32 A return of a supplier must list all of the following information and any other
33 information required by the Secretary:

- 34 (1) The number of gallons of tax-paid motor fuel received by the supplier
35 during the month, sorted by type of fuel.
36 (2) The number of gallons of motor fuel removed at a terminal rack during
37 the month from the account of the supplier, sorted by type of fuel.
38 (3) The number of gallons of motor fuel removed during the month for
39 export, sorted by type of fuel.
40 (4) The number of gallons of motor fuel removed during the month at a
41 terminal located in another state for destination to this State, as
42 indicated on the shipping document for the fuel, sorted by type of fuel.

(5) The number of gallons of motor fuel the supplier sold during the month to a governmental unit whose use of fuel is exempt from the tax, sorted by type of fuel.

(6) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors or licensed importers.

(7) The number of gallons of motor fuel the supplier exchanged during the month with another licensed supplier pursuant to a two-party exchange agreement, sorted by type of fuel."

SECTION 26. G.S. 105-449.97(c) reads as rewritten:

"(c) Percentage Discount. -- A supplier that sells motor fuel directly to an unlicensed distributor or to the bulk end-user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier."

SECTION 27. G.S. 105-449.100 reads as rewritten:

"§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.

(a) Requirement. -- A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. A terminal operator that is required to be licensed in this State must report all motor fuel removed from out-of-state terminals that has this State as its destination state.

(b) Content. -- The return is due on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel, sorted by type of fuel.

(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel, sorted by type of fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month.

(4) The number of gallons of motor fuel in inventory at the beginning of each month and at the end of each month.

(c) Due Date. -- The return is due on the same date as a monthly return due under G.S. 105-449.90."

SECTION 28. G.S. 105-449.102 reads as rewritten:

"§ 105-449.102. Distributor to file return showing exports from a bulk plant.

(a) Requirement. -- A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel.

(b) Content. – The return must contain the following information and any other information required by the Secretary:

- (1) The number of gallons of motor fuel exported during the month.
- (2) The destination state of the motor fuel exported during the month.
- (3) A certification that the distributor has paid to the destination state of the motor fuel exported during the month, or will pay on a timely basis, the amount of tax due that state on the fuel.

(c) Due Date. – The return is due on the same date as a monthly return due under G.S. 105-449.90."

SECTION 29. G.S. 105-449.105 reads as rewritten:

"§ 105-449.105. Monthly refunds for tax paid on exempt fuel, lost fuel, and accidental mixes that result in fuel unsuitable for highway use.

(a) Exempt Fuel. – An entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the entity pays on its motor fuel. A person who sells motor fuel to an entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the person pays on motor fuel it sells to the entity. A credit card company that issues a credit card to an entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the company pays on motor fuel the entity purchases using the credit card.

A person may obtain a monthly refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary. An out-of-state bulk end-user must be registered as an exporter before a refund may be issued on any exports from a bulk plant.

(b) Lost Fuel. – A supplier, an importer, or a distributor that loses tax-paid motor fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident may obtain a monthly refund for the tax paid on the fuel.

(c) Accidental Mixes. – A person that accidentally combines any of the following may obtain a monthly refund for the amount of tax paid on the fuel:

- (1) Dyed diesel fuel with tax-paid motor fuel.
- (2) Gasoline with diesel fuel.
- (3) Undyed diesel fuel with dyed kerosene.

(d) Repealed by Session Laws 1998-98, s. 29.

(e) Refund Amount. – The amount of a refund allowed under this section is the amount of excise tax paid, less the amount of any discount allowed on the fuel under G.S. 105-449.93."

SECTION 30. G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

..."

SECTION 31. G.S. 105-449.105A(a)(1) reads as rewritten:

"(1) The end-user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end-user that contains fuel used only for

one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:

- a. Heating.
- b. Drying crops.
- c. A manufacturing process."

SECTION 32. G.S. 105-449.108(a) reads as rewritten:

"(a) Due Dates. – The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month
	"

SECTION 33. G.S. 105-449.117(a) reads as rewritten:

"(a) Violation. – It is unlawful to use dyed diesel fuel or other non-tax-paid fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless that use is allowed under section 4082 of the Code. It is unlawful to use motor fuel or alternative fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless the tax imposed by this Article, Article 36D, or Chapter 119, Article 3 has been paid. A person who violates this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty."

SECTION 34. G.S. 105-449.121(b) reads as rewritten:

"(b) Inspection. – The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

- (1) Audit a person who is required to have or elects to have a license under this Article.
- (2) Audit a distributor, a retailer, a bulk-end user, or a motor fuel user that is not licensed under this Article.
- (3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.
- (4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.
- (5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle."

SECTION 35. G.S. 105-449.130 reads as rewritten:

"§ 105-449.130. Definitions.

The following definitions apply in this Article:

- (1) Alternative fuel. – A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.
- (1a) Bulk end-user. – A person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.
- (2) Highway. – Defined in G.S. 105-449.60.

- 1 (3) Highway vehicle. – Defined in G.S. 105-449.60.
2 (4) Motor fuel. – Defined in G.S. 105-449.60.
3 (5) Motor fuel rate. – Defined in G.S. 105-449.60.
4 (6) Provider of alternative fuel. – A person who does one or more of the
5 following:
6 a. Acquires alternative fuel for sale or delivery to a bulk end-user
7 or a retailer.
8 b. Maintains storage facilities for alternative fuel, part or all of
9 which the person uses or sells to someone other than a bulk
10 end-user or a retailer to operate a highway vehicle.
11 c. Sells alternative fuel and uses part of the fuel acquired for sale
12 to operate a highway vehicle by means of a fuel supply line
13 from the cargo tank of the vehicle to the engine of the vehicle.
14 d. Imports alternative fuel to this State, by a means other than the
15 usual tank or receptacle connected with the engine of a highway
16 vehicle, for use by that person to operate a highway vehicle.
17 (7) Retailer. – A person who maintains storage facilities for alternative
18 fuel and who sells the fuel at retail or dispenses the fuel at a retail
19 location to operate a highway vehicle."

20 **SECTION 36.** G.S. 105-449.131 reads as rewritten:

21 **"§ 105-449.131. List of persons who must have a license.**

22 A person may not engage in business in this State as any of the following unless the
23 person has a license issued by the Secretary authorizing the person to engage in that
24 business:

- 25 (1) A provider of alternative fuel.
26 (2) A bulk end-user.
27 (3) A retailer."

28 **SECTION 37.** G.S. 105-449.133(a) reads as rewritten:

29 "(a) Who Must Have Bond. – The following applicants for a license must file with
30 the Secretary a bond or an irrevocable letter of credit:

- 31 (1) An alternative fuel provider.
32 (2) A retailer or a bulk end-user that intends to store highway and
33 nonhighway alternative fuel in the same storage facility."

34 **SECTION 38.** G.S. 105-449.137(a) reads as rewritten:

35 "(a) Liability. – A bulk end-user or retailer that stores highway and nonhighway
36 alternative fuel in the same storage facility is liable for the tax imposed by this Article.
37 The tax payable by a bulk end-user or retailer applies when fuel is withdrawn from the
38 storage facility. The alternative fuel provider that sells or delivers alternative fuel is
39 liable for the tax imposed by this Article on all other alternative fuel."

40 **SECTION 39.** G.S. 105-449.138 reads as rewritten:

41 **"§ 105-449.138. Requirements for bulk end-users and retailers.**

42 (a) Informational Return. – A bulk end-user and a retailer must file a quarterly
43 informational return with the Secretary. A quarterly return covers a calendar quarter and
44 is due by the last day of the month that follows the quarter covered by the return.

1 The return must give the following information and any other information required
2 by the Secretary:

3 (1) The amount of alternative fuel received during the quarter.

4 (2) The amount of alternative fuel sold or used during the quarter.

5 (b) Storage. – A bulk end-user or a retailer may store highway and nonhighway
6 alternative fuel in separate storage facilities or in the same storage facility. If highway
7 and nonhighway alternative fuel are stored in separate storage facilities, the facility for
8 the nonhighway fuel must be marked in accordance with the requirements set by G.S.
9 105-449.123 for dyed diesel storage facilities. If highway and nonhighway alternative
10 fuel are stored in the same storage facility, the storage facility must be equipped with
11 separate metering devices for the highway fuel and the nonhighway fuel. If the
12 Secretary determines that a bulk end-user or retailer used or sold alternative fuel to
13 operate a highway vehicle when the fuel was dispensed from a storage facility or
14 through a meter marked for nonhighway use, all fuel delivered into that storage facility
15 is presumed to have been used to operate a highway vehicle."

16 **SECTION 40.** G.S. 105-449.139(c) reads as rewritten:

17 "(c) Lists. – The Secretary must give a list of licensed alternative fuel providers to
18 each licensed bulk end-user and licensed retailer. The Secretary must also give a list of
19 licensed bulk end-users and licensed retailers to each licensed alternative fuel provider.
20 A list must state the name, account number, and business address of each license holder
21 on the list. The Secretary must send an annual update of a list to each license holder, as
22 appropriate."

23 **SECTION 41.** G.S. 119-15 reads as rewritten:

24 **"§ 119-15. Definitions that apply to Article.**

25 The following definitions apply in this Article:

26 (1) Alternative fuel. – Defined in G.S. 105-449.130.

27 (2) Aviation gasoline. – Defined in G.S. 105-449.60.

28 (3) Dyed diesel fuel. – Defined in G.S. 105-449.60.

29 (4) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel
30 from either of the following:

31 a. A person who is not required to be licensed under Part 2 of
32 Article 36C of Chapter 105 of the General Statutes and who
33 maintains storage facilities for dyed diesel fuel to be used for
34 nonhighway purposes.

35 b. Another dyed diesel fuel distributor.

36 (5) Gasoline. – Defined in G.S. 105-449.60.

37 (6) Jet fuel. – Defined in G.S. 105-449.60.

38 (7) Kerosene. – Defined in G.S. 105-449.60.

39 (8) Kerosene distributor. – A person who acquires kerosene from any of
40 the following for subsequent sale:

41 a. A supplier licensed under Part 2 of Article 36C of Chapter 105
42 of the General Statutes.

43 b. A kerosene supplier.

44 c. Another kerosene distributor.

(9) Kerosene supplier. – Either of the following:

- a. A person who supplies both kerosene and motor fuel and, consequently, is required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.
- b. A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.

(10) Motor fuel. – Defined in G.S. 105-449.60.

(11) Person. – Defined in G.S. 105-229.90.

(12) Terminal. – Defined in G.S. 105-449.60.

(13) Terminal operator. – Defined in G.S. 105-449.60."

SECTION 42. G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this Article regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of G.S. 105-449.90.

"SECTION 43. This act becomes effective January 1, 2009.